IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 462 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

MANILAL K PATEL

Versus

BAROT MAUBHAI PARSHOTTAMDAS

Appearance:

MR VC DESAI for Appellant

MR VH DESAI for Respondent No. 1

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/08/96

ORAL JUDGEMENT

The appellant, through this appeal, calls in question, the order of acquittal dated 18th April 1988, came to be passed by the learned Judicial Magistrate, First Class, Kalol, in Summary Case No.128 of 1987, on his file.

2. The case of the prosecution falls within a narrow

compass. There is the Agriculture Produce Market Committee at Kalol. Manilal Patel was the Inspector, at the relevant time. Those who desire to trade within the local limits of the Market Committee, have to obtain the licence. Without licence or contrary to the terms of the licence, one cannot carry on the business in the area and if at all they do so, they are liable to be prosecuted under the provisions of the Gujarat Agricultural Produce Market Act, 1963. The Inspector of the Committee, on 18th November 1986, inquired at the shop of the respondent no.1 and he found that breach of Section 8 punishable under Section 36(1)(3) of the Gujarat Agricultural Produce Market Act was committed because, without holding the licence, the respondent no.1 was found trading within the local limits of that Market Committee. He, therefore, filed the complaint before the lower Court. After the complaint was filed, the summons to the respondent no.1 was issued and he appeared before the lower Court. Thereafter, from time to time, on one or the other reason, the case was being adjourned. Lastly, the matter was listed for hearing on 18th April 1988. On that day, on behalf of the respondent no.1, an application at Exh.5 was filed for seeking exemption, which was allowed and thereafter another application at Exh.6 was filed praying for dismissal of the complaint as the complainant was not present. The learned Magistrate allowed the application at Exh.6 and dismissed the complaint and acquitted the respondent no.1, as per the provisions of Section 256 of the Code of Criminal Procedure. Being aggrieved by such order, the Inspector of the Market Committee has preferred the present appeal.

3. It has been contended on behalf of the appellant that the learned Magistrate was not at all right in resorting to the provisions of Section 256 of the Code of Criminal Procedure. The rojnama on record was sufficient to hold that there was no fault on the part of the complainant who used to appear on every day before the Court. He was sincere in prosecuting the matter, but something unfortunate happened on that day, i.e. 18th April 1988 and the order came to be passed. The order passed by the lower Court is, therefore, required to be quashed and set aside and the matter is to be sent back for fresh trial.

4. On behalf of the respondent no.1, learned Counsel Mr.P.J.Patel for Mr.V.H.Desai submitted that there was no just cause to interfere with the order. On behalf of respondent no.2-the State, learned Addl.Public Prosecutor Mr.S.T.Mehta submitted that the order, found just and proper in the circumstances, might be passed.

5. Here is a case wherein it seems the functioning of the Court and judicial administration turned out to be curse because of quixotic approach and consequential order passed by the learned Magistrate. The said order is vehemently challenged, referring to the rojnama as well as Applications at Exh.5 and 6 presented on behalf of the respondent no.1. The learned Magistrate has passed the order on 18th April 1988 on the application at Exh.6 and dismissed the complaint, because he found that the complainant was not present, and it was just and proper to resort to Section 256 of the Code of Criminal Procedure. He, therefore, invoked the powers under that Section and dismissed the complaint and acquitted the respondent no.1 with which he was charged. But, on perusal of the material on record, I find that the learned Magistrate is not at all justified in passing the order. Before I refer to the material on record, I may say that, while passing the order, the Judge should not be hasty, but circumspective, because hasty order does cause injustice as well as cause irreparable injury to the party for no fault on his part. The facts on record, therefore, cannot be lost the sight of, because the immediate happening of the things or taking shape on a particular day for a moment may be illusory or misguiding. If the Judge passes the order in haste without taking into account other material on record, and if he is also obsessed with the disposal mania, that order if passed in haste, has to be deprecated.

6. Looking to the rojnama, I find no reason to blame the complainant. The complaint came to be lodged on 30th January 1987 and on that day, the complainant personally went to the Court and presented the complaint. The next day, for service of the summons was fixed, and it was 27th February 1987. On that day, the complainant was present, but the summons was not issued and, therefore, the matter was adjourned to 10th April 1987. On 10th April 1987, the complainant was present and the summons was either not received or the office had not issued. The matter was then adjourned to 8th May 1987. On 8th May 1987, the complainant was present and it was ordered to issue the summons a fresh as the summons already issued was not received back either served or unserved. On the next day, i.e. 19th June 1987, the complainant remained present, but the respondent no.1 was not present as he was not served. The matter was adjourned to 27th July 1987. On that day, the complainant was present, but the summons was not served and therefore, the matter had to be adjourned to 16th September 1987. On 16th September 1987, the complainant was present. The

respondent no.1 was also present. The copies of the necessary papers were given to the respondent no.1 and the matter was adjourned to 10th November 1987 for recording the plea. On 10th November 1987, both the appellant and the respondent no.1 were present. A plea was taken. The respondent no.1 pleaded not guilty and therefore, the matter was adjourned to 2nd December 1987 for recording of the evidence. On 2nd December 1987, learned Addl.Public Prosecutor was present and the respondent no.1 was not present. It has not been mentioned specifically about the presence of the appellant. On 30th December 1987, both the parties were present and on a joint request coming from the parties, the learned Magistrate adjourned the matter to 30th January 1988. On the next day fixed, the parties were present and the Advocate engaged on behalf of the respondent no.1 filed his Vakalatnama. Hence, the matter was adjourned for hearing to 10th February 1988. On that day, both the parties were present, but as the Court's time was over. The matter was adjourned to 18th March 1988. On the next date fixed, i.e. 18th March 1988, the respondent no.1 was not present and the matter was adjourned as his Advocate requested for time. It is not made clear whether the appellant was, on that day, present or not. The matter was then adjourned to 18th April 1988-the fateful day. On that day, neither the appellant nor the respondent no.1 was present. The learned Advocate representing the respondent no.1 filed the application at Exh.5 for necessary exemption which was allowed. He then also filed application at Exh.6 and urged the learned Magistrate to dismiss the complaint as the complainant was not present. The learned Magistrate accepted application and passed the order dismissing the complaint. Thus, the impugned order came to be passed.

7. What can be deduced on perusal of the rojnama is that, on 2nd December 1987 and 18th March 1988, it seems that the complainant might not be present as nothing has been specifically mentioned. But, what is specifically found is that, on 18th April 1988, the complainant was not at all present. It is pertinent to note that except for one or two occasions, the respondent no.1 continuously remained present. The learned Magistrate, therefore, before passing the impugned order, ought to have borne in mind, who was at fault and who was to be dealt with strictly in accordance with law. From the rojnama, it can be seen that the complainant was sincere in prosecuting the complaint he had filed and therefore, he was virtually all the while attending the Court as and when the dates were given. But, unfortunately, on the ill-fated day, he could not appear before the Court when

the applications at Exh.5 and 6 were presented and the order came to be passed. There is nothing on record that the complainant all the while careful in attending the Court, was not present deliberately, or because of the negligence on his part, he was not present. The learned Magistrate, therefore, ought to have borne in mind this fact and should have abstained from passing the order, which can be termed a hasty one.

8. Once such case came up before this Court; and in that case, i.e. SARDAR GURACHARANSING JAIMALSING v. SARDAR JASHWANTSING SUNDERSING AND ORS., 1983 G.L.H. (UJ), p.110, a similar question arose. In that case, the complainant, on most of the adjourned dates, was remaining present before the Court and when ultimately the matter came to be adjourned to 14th July 1991, the complainant did not remain present because of some misunderstanding and as he was not present, the complaint came to be dismissed. It is held that there was no negligence on the part of the complainant to be remained present on that day and all throughout the complainant was vigilant. The appeal was, therefore, allowed and the matter was sent back to the lower Court for a fresh trial. Here, in this case also, likewise has happened, and I see no reason to take a different view than what has been taken by this Court in the case of SARDAR GURACHARANSING JAIMALSING (supra). When in this case, for the reasons stated hereinabove, the appellant was all the while sincere, but unfortunately, on a particular day, failed to appear before the Court, he cannot be termed `negligent', on the contrary, he was all the while vigilant in pursuing the matter. Hence, prudence dictates that a opportunity should be afforded to the complainant to proceed with the matter in accordance with law and the respondent no.1 cannot be allowed to take undue advantage of casual absence of complainant and further cannot be allowed to be let off on the unjust exercise of powers. The appeal therefore, requires to be allowed and the order of acquittal passed requires to be quashed and set aside.

9. The result is that the appeal is allowed. The order of acquittal passed by the learned Judge in Summary Case No.128 of 1987 is hereby quashed and set aside. The case is remanded to the lower Court for fresh hearing and disposal in accordance with law. The learned Magistrate shall afford every reasonable opportunity to both the parties and shall dispose of the case in accordance with law. The parties to appear before the lower Court on 23rd August 1996. The learned Magistrate shall decide the case at his earliest, but not later than 30th

November 1996.

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